TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 825.

THE GULF AND SHIP ISLAND RAILROAD COMPANY ET AL., PLAINTIFFS IN ERROR,

vs.

GEORGE P. HEWES, TAX COLLECTOR OF HARRISON COUNTY, MISSISSIPPI.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

FILED JUNE 12, 1899.

(17,441.)

(17,441.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 327.

THE GULF AND SHIP ISLAND RAILROAD COMPANY ET AL., PLAINTIFFS IN ERROR,

vs.

GEORGE P. HEWES, TAX COLLECTOR OF HARRISON COUNTY, MISSISSIPPI.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 1, 1899.

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1 Supreme Court of Mississippi, March Term, A. D. 1899.

Pleas and proceedings had and done at a regular term of the supreme court of Mississippi, begun and held in the court-room, in the capitol, in the city of Jackson, on the first Monday, the sixth day, of March, in the year of our Lord one thousand eight hundred and ninety-nine.

Present: The Honorable Thomas H. Woods, chief justice, and the Honorable Albert H. Whitfield and the Honorable S. H. Terral, associate justices; E. W. Brown, clerk of said court, in person and by C. C. Campbell, his deputy; Thomas J. Wharton, marshal, and Thomas Grant, porter.

Proclamation being made, court proceeded to the dispatch of business.

Among other cases considered and determined by said supreme court was the following, to wit:

2 *Caption.*

THE STATE OF MISSISSIPPI, }
Harrison County. }

A regular term of the chancery court of Harrison county was begun on the first Monday of February, A. D. 1898, being the 7th day of February, A. D. 1898, at the court-house of said county, in Mississippi City, in said county and State, the same being the time and place designated by law for holding said court.

Were in attendance on said court, George P. Hewes, sheriff of said Harrison county, and F. S. Hewes, clerk of said court; the Hon. N. C. Hill, chancellor of the second chancery court, district of the State of Mississippi, being absent in obedience of the following order, to wit:

To F. S. Hewes:

Entirely unable to hold court; adjourn until Tuesday; have dockets ready.

N. C. HILL, *Chancellor.*

The court, having been duly opened by the said sheriff, was by him adjourned until Tuesday morning, 8 o'clock, February 8th, 1898.

TUESDAY MORNING, 8 O'CLOCK, *February 8th, A. D.* 1898.

The court met pursuant to adjournment.

Present: The Honorable N. C. Hill, chancellor of the second chancery court, judicial district of the State of Mississippi; George P. Hewes, sheriff of Harrison county, Mississippi, and F. S. Hewes, clerk of said court.

Bill of Complaint.

STATE OF MISSISSIPPI,
Harrison County.

Chancery Court, February Term, A. D. 1897.

GULF & SHIP ISLAND RAILROAD COMPANY, Complainant,
vs.
GEORGE P. HEWES, Tax Collector, Defendant.

To the chancery court of Harrison county:

The Gulf & Ship Island Railroad Company, a corporation of the State of Mississippi, duly incorporated on the 23rd day of February, 1882, under the laws of said State, by its solicitors, complains of George P. Hewes, tax collector of Harrison county, Mississippi, and complainant shows to the court the following facts:

1. That the legislature of the State of Mississippi, by an
3 act approved February 23rd, 1882, duly incorporated the Gulf & Ship Island Railroad Company as a corporation of said State, for the purpose of building and operating a railroad in and through said State, and by the said charter of incorporation, which is to be found on pages 849 to 862, inclusive, of the laws of the State of Mississippi for the year 1882, vested the said Gulf & Ship Island Railroad Company with all the powers, rights, and immunities usual and necessary to the accomplishments of the objects of its said incorporation.

2. That by the 18th section of the said charter of incorporation it is provided as follows:

"Be it further enacted, That in order to encourage the investment of capital in the works which said company is hereby authorized to construct and maintain, and to make certain in advance of such investment, and as an inducement and consideration therefor, the taxes and burdens which the State will and will not impose thereon, it is hereby declared that said company, its stock, its railroads, and appurtenances, and all its property in this State, necessary or incident to the full exercise of all the powers herein granted, shall be exempt from taxation for a term of twenty years from the passage of this act."

3. And complainant charges as a matter of law that by the terms of the said section 18 the property of complainant, including its line, road-bed, rolling stock, and its depots and lands necessary or convenient to the use, operation, management, equipment, or maintenance of the said railroad, are exempt from any and all taxation, both by the State, county, or by any municipality, up to the 23rd day of February, A. D. 1902.

4. And complainant further shows that immediately after the passage of the said act complainant's corporation entered upon the construction of the said railroad, and that complainant now has in operation a line of railroad running from Gulfport, in the county of Harrison, in said State, to Hattiesburg, in the county of Perry,

in said State, a distance of 70.22 miles, as well as a branch line running from Gulfport, in said county and State, to Handsboro, a distance of about four miles, which branch line was constructed by complainant during the month of November, A. D. 1896.

5. Complainant further shows that notwithstanding its exemption from taxation, as aforesaid, which exemption is in full force and has not been repealed, the railroad commission of the State of
4 Mississippi have, in violation of the rights of complainant, returned its said property for taxation and has forwarded to George P. Hewes, tax collector of Harrison county, Mississippi, the assessment of the valuation of the property of complainant, to wit, its line, road-bed, and depots, and that the said George P. Hewes has demanded of complainant the sum of two hundred and fifty dollars ($250) as a privilege tax, and the further sum of seventeen hundred and eighty and $\frac{95}{100}$ dollars ($1,780.95) as State and county taxes upon its said line, road-bed, and depots, the said sum being — per cent. levied for State and — per cent. for county purposes.

6. The said George P. Hewes has not only demanded of complainant the taxes aforesaid, but has notified complainant that unless the same are paid within the time prescribed by law he, as tax collector of Harrison county, will proceed to collect said amount by a distress and levy upon the property of complainant.

7. Complainant avers and charges that the said taxes are, for the reason aforesaid, illegally demanded of complainant, and that unless restrained by this honorable court the said tax collector will proceed, as he has threatened, to seize the property of complainant for the satisfaction thereof, thereby inflicting irreparable loss and injury upon complainant.

Wherefore, the premises considered, complainant prays that its bill of complaint may be received and filed; that process may issue as required by law to said George P. Hewes, tax collector, commanding him to appear and answer this bill at or before the next term of this honorable court; that a preliminary writ of injunction may issue restraining the said George P. Hewes from collecting the taxes aforesaid, and from seizing, destraining, or levying upon any of the property of complainant for the satisfaction thereof.

That upon final hearing that this court will decree that complainant is exempt from taxation on its property as above described until the 23rd day of February, A. D. 1902, and that the said injunction issued against said tax collector may be perpetuated, and the said tax collector perpetually enjoined from demanding or collecting of complainant any taxes whatever on account of its line, road-bed, rolling stock, and depots, and all other property necessary or convenient to the use, operation, management, equipment,
5 or maintenance of said road until the year 1902, as aforesaid; and if mistaken in the relief prayed for, complainant prays for such other, further, and general relief as the equities of its case entitles it to receive, and complainant will ever pray.

E. J. BOWERS,
D. B. CHAFFE,
Solicitors for Complainant.

STATE OF MISSISSIPPI,
Harrison County.

Personally appeared before me, the undersigned authority in and for said county and State, S. S. Bullis, general manager of the Gulf & Ship Island Railroad Company, who, being by me first duly sworn, deposes and says that all the facts set forth in the foregoing bill are true.

S. S. BULLIS.

Sworn to and subscribed before me this 21st day of October, A. D. 1896.

W. S. CHAMPLIN,
J. P., District No. 2.

THE STATE OF MISSISSIPPI:

The clerk of the chancery court of Harrison county is hereby directed to issue the writ of injunction, as herein prayed for, on complainants entering into bond condition, as required by sec. 561, Annotated Code, in a penalty equal to double the amount of taxes sought to be collected, the said bond to be approved by the clerk.

Witness my hand the 28th day of Dec., 1896.

N. C. HILL,
Chancellor.

Filed Jan'y 1st, 1897.
F. S. HEWES, *Clerk.*

Injunction Bond.

THE STATE OF MISSISSIPPI,
County of Harrison.

We, the Gulf & Ship Island Railroad Company, as principal, and E. J. Bowers, S. S. Bullis, as sureties, bind ourselves to pay to George P. Hewes, tax collector of Harrison county, Mississippi, defendant, the sum of four thousand five hundred dollars unless the said principal obligor shall promptly pay the taxes enjoined and pay all damages and costs which may be awarded against or which the
6 said obligee may suffer or sustain by reason of the suing out by the said Gulf & Ship Island railroad of a writ of injunction and supersed-as in the cause of The Gulf & Ship Island Railroad *vs.* George P. Hewes, tax collector, &c., No. —, now pending in the chancery court of said county, enjoining and restraining the said defendant from levying or collecting against complainant any privilege or ad valorem taxes on its lines, road-bed, stock, depots, and lands necessary or convenient to the use, operation, management, equipment, or maintenance of the railroad of complainant until Feb'y 23rd, 1902, and especially from collecting the sum of two hundred and fifty dollars, privilege taxes, and the sum of $1,780.95, now demanded by defendant for taxes on its property above enumerated in case said injunction be dissolved.

Witness our signatures hereto this 30th day of December, 1896.

GULF & SHIP ISLAND RAILROAD COMPANY,
By S. S. BULLIS, *General Man'g'r.*
E. J. BOWERS.

THE STATE OF MISSISSIPPI, }
County of Harrison. }

Chancery Court, in Vacation.

Before me, F. S. Hewes, clerk of said court, this day came the sureties on the above bond, and, being by me duly sworn, deposed that over and above their just debts and liabilities and their contingent liabilities on all other bonds they were worth in visible property not exempt from execution or attachment by the laws of Mississippi as follows, to wit: the said E. J. Bowers the sum of $4,500.00.

Subscribed and sworn to before me this 9th day of January, 1897.

F. S. HEWES, *Clerk.*

I approve the above bond and sureties.

F. S. HEWES, *Clerk.*

Filed 11th day of Jan'y, 1897.

F. S. HEWES, *Clerk.*

7 *Writ of Injunction.*

The State of Mississippi to George P. Hewes, tax collector of Harrison county, Mississippi, defendant:

A bill for an injunction, as hereinafter set forth, having been duly filed, with the fiat of the Hon. N. C. Hill, chancellor of the 2nd chancery court, district of said State, thereon endorsed, and approved injunction bond having been given, you are hereby commanded and enjoined to desist from collecting from the complainant, The Gulf & Ship Island Railroad Company, the sum of two hundred and fifty dollars as a privilege tax, and the further sum of seventeen hundred and eighty and $\frac{95}{100}$ dollars as State and county taxes, upon said complainant's line of railroad, road-bed, and depots, and from seizing, destraining, or levying upon any of the property of the said complainant for the satisfaction thereof. You are further commanded to appear before the chancery court of the county of Harrison, in said State, at a term thereof, to be held at the court-house, in the town of Mississippi City, Mississippi, on the first Monday of February, A. D. 1897, then and there to answer the bill of complaint of the Gulf & Ship Island Railroad Company to which you are defendant.

Given under my hand and official seal, at Mississippi City, Miss., this the 11th day of January, A. D. 1897.

[SEAL.]

F. S. HEWES,
Chancery Clerk, Harrison Co., Miss.

To J. J. Herbert, justice of the peace of Harrison county, Miss., there being no coroner and good cause of exception as to the sheriff to serve and return.

Return.

I have this day executed the within writ personally by delivering to the within-named Geo. P. Hewes, tax collector of Harrison county, Miss., a true copy of this writ.

This the 11th day of Jan'y, 1897.

J. J. HERBERT,
J. P., Dis. # 2.

Returned and filed this the 11th day of January, 1897.

F. S. HEWES,
Chancery Clerk.

8 *Demurrer.*

Chancery Court, Feb. Term, 1897.

GULF & SHIP ISLAND RAILROAD COMPANY
vs.
GEO. P. HEWES, Tax Collector. } No. 861.

The defendant demurs to the bill of complaint filed against him in said cause and assigns the following causes of demurrer:

1st. Because there is no equity on the face of said bill.

2nd. Because said bill shows no cause in law or equity to prevent the collection of the taxes mentioned in said bill due by said complainant.

3rd. Because the exemption granted to complainant corporation in its charter, Acts 1882, sec. 18 thereof, was a mere act of bounty or immunity, and repealable at the pleasure of the legislature, and void of any element of contract, and having no force *forever*, or affording no protection from taxation of said corporation after its repeal by the legislature, and being in nowise a vested right.

4th. Because such exemption from taxation as is alleged and set forth in complainant's bill of complaint is not warranted, permitted, or protected by the laws of this State, the exemption mentioned in complainant's charter, Acts 1882, p. 861, sec. 18, having been repealed and annulled. Wherefore defendant prays the judgment of this hon. court if he shall make further answer to said bill of complaint.

GEO. P. HEWES,
Tax Collector,
By sol., W. G. EVANS, JR.

I hereby certify that, in my opinion, the foregoing demurrer is well taken and maintainable.

W. G. EVANS, JR., *Sol.*

Filed Feb'y 2nd, 1897.
F. S. HEWES, *Clerk.*

Refiled September 27th, 1897.
F. S. HEWES, *Clerk.*

9 *Order to Set Down.*

GULF & SHIP ISLAND RAILROAD COMPANY
vs.
GEO. P. HEWES, Tax Collector. } No. 861.

The clerk will please set this cause down on demurrer to bill of complaint.

W. G. EVANS, JR., *Sol.*

Filed Feb'y 2nd, 1897.
F. S. HEWES, *Clerk.*

Order.

GULF & SHIP ISLAND RAILROAD COMPANY
vs.
GEO. P. HEWES, Tax Collector. } No. 861.

This cause having been submitted to the court at this term of the court on bill of complaint and demurrer thereto interposed on part of defendant, the court having taken same under advisement—

It is ordered adjudged, and decreed that a decree in said cause shall be rendered in vacation and said complainant or defendant shall have the right of appeal, as though such decree had been rendered at this term.

Ordered, adjudged, and decreed this 26th day of February, 1897.

N. C. HILL,
Chancellor.

Filed Feb'y 26th, '97.
F. S. HEWES, *Clerk.*

Claim for Attorneys' Fees.

GULF & SHIP ISLAND RAILROAD COMPANY
vs.
GEORGE P. HEWES, Tax Collector.

The complainant in said cause will take notice that in case of the dissolution of the injunction in this cause that defendant will claim and offer to prove a reasonable solicitor's fee for defending said cause in the chancery court of Harrison county.

W. G. EVANS, JR.,
Sol. for Defendant.

Filed Jan'y 20th, 1897.
F. S. HEWES, *Clerk.*

10 *Decree.*

STATE OF MISSISSIPPI, *Harrison County.*

Chancery Court.

GULF & SHIP ISLAND RAILROAD COMPANY *vs.* GEO. P. HEWES, Sheriff. } No. 861.

This cause having at the Feb'y term, 1897, been submitted on defendant's demurrer to complainant's bill, and the same having been taken under advisement by the court, and the chancellor, having become satisfied therein, doth order, adjudge, and decree that said demurrer be, and is hereby, sustained. The complainant having so requested, it is ordered that twenty days be allowed complainant from this date in which to file amended bill in this cause.

It is ordered that the clerk enter this decree on the minutes of said court in vacation.

Ordered, adjudged, and decreed in vacation at Biloxi, Miss., the 13th day of Sept., 1897.

N. C. HILL, *Chancellor.*

Filed Sept. 16th, 1897.
F. S. HEWES, *Clerk.*

Amendment to Bill of Complaint.

STATE OF MISSISSIPPI, *Harrison County.*

Chancery Court, in Vacation.

GULF & SHIP ISLAND RAILROAD CO., Complainant, *vs.* GEO. P. HEWES, Tax Collector, Defendant.

Now comes complainant, and by leave of the court *just* had and obtained and without prejudice to the injunction hereinbefore granted amends its bill of complaint by inserting at the conclusion of the fourth paragraph thereof, on the second page thereof,
11 and after the words "November, A. D. 1896," the following:

Complainant further says and charges that the charter aforesaid and the exemption from taxation aforesaid was and constituted a contract between the incorporators and stockholders of complainant corporation and the State of Mississippi; that the State of Mississippi would not demand from complainant any taxes whatever upon its capital, its stock, its railroads and appurtenances, and upon any of its property in this State necessary or incident to the full exercise of the powers of such charter granted for the term of 20 years from the enactment of said charter, to wit, the twenty-third day of February, 1882, and that the incorporators and stockholders of complainant and the complainant, acting under the faith

of the said contract of exemption and being thereto moved and induced by reason of the said contract of exemption, entered upon the construction of the road aforesaid and the branches and side tracks aforesaid and completed the same at a cost of about one million dollars, with the full faith and belief that said contract of exemption contained in complainant's charter would be respected and observed by the said State, and that but for the said contract of exemption and the faith and belief of complainant, its incorporators and stockholders, in the good faith of the State in maintaining and observing its said contract, said railroad, branches, side tracks, etc., would never have been built.

And complainant further says that while it is contended by the said tax collector and, as complainant is advised and believes, by the board of supervisors of Harrison county, Mississippi, that the said exemption from taxation has been repealed by the provisions of the Annotated Code of 1892, which said contention complainant now avers is utterly untrue, still complainant pleads and shows that it is not in the power of the State of Mississippi to repeal the said exemption from taxation for the reason that the same constitutes a contract upon which complainant, its stockholders and corporators, have acted, and upon the faith of which they have expended, prior to said alleged repeal, large sums of money in and about the construction of said railroad, its branches and side tracks, to wit, the sum of one million dollars

And complainant says that to permit the State to repeal its contract of exemption so entered into by it would be a violation of the 10th section of article one of the Constitution of the United
12 States of America; and complainant pleads the protection of the said section and article of the Constitution of the United States of America against any repeal of the said exemption and in support of its exemption aforesaid.

E. J. BOWERS,
General Counsel, G. & S. I. R. R.

STATE OF MISSISSIPPI, }
Jefferson County. }

Personally appeared before me, the undersigned, notary public in and for the aforesaid county and State, E. J. Bowers, solicitor for the Gulf & Ship Island Railroad Company, —, being first duly sworn, deposes and says that the facts stated in the foregoing amendment are true.

E. J. BOWERS.

Subscribed and sworn to before me this 24th day of September, 1897.

[SEAL.] FLOYD T. JABINE.

Commission expires end of next General Assembly.

Filed Sept. 27th, 1897.
F. S. HEWES, *Clerk.*
2—327

Bill of Exceptions.

GULF & SHIP ISLAND RAILROAD CO.
vs.
GEO. P. HEWES, Sheriff.

Be it remembered that this cause was taken under advisement by his honor the chancellor, N. C. Hill, and that on the 13th day of September a decree was rendered in vacation sustaining the demurrer of defendant to the bill of complaint.

(See pages 10 and 11 of this transcript.)

Whereupon complainant, by its sol., obtained leave from the chancellor to amend its bill of complaint, which amendment was filed on 26th day of September, 1897.

(See pages 11, 12, 13, and 14 of this transcript.)

To which action of the chancellor in vacation in granting leave to complainant to amend its bill the defendant then and there excepted and now excepts, and prays that his bill of exceptions may be signed; which is accordingly done on the 29th day of September, 1897.

N. C. HILL, *Chancellor.*

Filed Oct. 2nd, 1897.
F. S. HEWES, *Clerk.*

13 *Agreement.*

STATE OF MISSISSIPPI,
Harrison County.

Chancery Court, Harrison County.

GULF & SHIP ISLAND R. R. CO.
vs.
GEORGE P. HEWES.

In this cause it is agreed that the demurrer originally filed to the original bill shall be considered as refiled to the original bill as amended, and that the said bill of complaint and objection shall be submitted for hearing in vacation to the chancellor, who shall render a decree therein in vacation as if in term time.

That in case the said demurrer should be sustained and the bill dismissed, the chancellor in his decree shall fix the amount of a bond for appeal, with supersed-as, to the supreme court of the State of Mississippi, which appeal may be perfected by the complainant as provided by law.

Witness our signatures this 31st day of December, A. D. 1897.

E. J. BOWERS,
Sol. for Complainant.
W. G. EVANS, JR.,
Sol. for Defendant.

Filed Jan'y 10th, 1898.
F. S. HEWES, *Clerk.*

Decree.

THE STATE OF MISSISSIPPI, }
Harrison County. }

Chancery Court.

GULF & SHIP ISLAND RAILROAD CO. }
vs. } No. 861.
GEO. P. HEWES, Sheriff. }

This cause having by agreement of counsel been submitted in vacation on amended bill of complaint and demurrer filed thereto, and the same having been taken under advisement by the chancellor, *and*, after considering same, doth order, adjudge, and decree that said demurrer be, and is hereby, sustained to said amended bill of complaint and said bill of complaint dismissed and complainant granted an appeal to the supreme court of said State, with supersed-as, upon complainant entering into bond conditioned, as provided by law, in the sum of one thousand dollars, said bond to be approved by the clerk of this court, and that complainant pay the costs of this suit.

Ordered, adjudged, and decreed this 10th day of February, A. D. 1898.

N. C. HILL, *Chancellor.*

Filed Feb'y 10th, 1898.
F. S. HEWES, *Clerk.*

14 THE STATE OF MISSISSIPPI, }
Harrison County. }

I, F. S. Hewes, clerk of the chancery court of said county and State, hereby certify that the foregoing 16 pages contain a true, correct, and complete transcript of all the pleadings, evidence, bills of exceptions, and decree appealed from in the case of The Gulf & Ship Island Railroad Company *v.* George P. Hewes, tax collector, No. 861, of said court, as the same remains on file and of record in my office.

Given under my hand and seal of said court, at office, in Mississippi City, this 2nd day of March, A. D. 1898.

F. S. HEWES, *Clerk.* [SEAL.]

Statement of Fee for Transcript.

Fee for transcript, taking bond, copy of bond, summons, and binding fee, $4.70, which has not been paid.

F. S. HEWES, *Clerk.*

STATE OF MISSISSIPPI, }
Harrison County. }

Know all men by these presents that we, Gulf & Ship Island Railroad Company, principal, and E. J. Bowers and E. Sugden,

sureties, are held and firmly bound unto Geo. P. Hewes, tax collector, in the sum of one thousand dollars; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Signed with our hands and delivered this the 23rd day of February, A. D. 1898.

The condition of this obligation is that whereas a final decree was rendered by the chancery court of Harrison county, in said State, on the 10th day of February, A. D. 1898, at the February term, A. D. 1898, thereof, in the case in said court styled "No. 861, G. & S. I. R. R. Co. *v.* Geo. P. Hewes, tax collector," adjudging that complainant's bill be dismissed:

Now, if said Gulf & Ship Island Railroad Company, principal obligor herein and appellant, will satisfy the said decree and also such final judgment as may be made in said cause and all costs if the said decree of said chancery court be affirmed by the supreme court of the State of Mississippi, to which court an appeal from said decree is to be prosecuted, then this obligation shall be void.

GULF & SHIP ISLAND RAILROAD COMPANY,
Per E. J. BOWERS,
E. SUGDEN.

The above bond is approved and filed this the 23rd day of February, 1898.

F. S. HEWES,
Chancery Clerk.

Endorsed: Filed Feb'y 23, 1898. F. S. Hewes, clerk.

15 THE STATE OF MISSISSIPPI, }
Harrison County. }

To the sheriff of said county, Greeting:

Whereas, on the 10th day of February, A. D. 1898, by a decree of our chancery court of the county of Harrison, in the aforesaid State, George P. Hewes, sheriff and tax collector of Harrison county, defendant, did recover judgment against the Gulf & Ship Island Railroad Company that the bill of complaint of said company in the case of The Gulf & Ship Island Railroad Co. *v.* Geo. P. Hewes, tax collector, No. 861, be dismissed, and that said company, complainant, pay the cost of suit, and the said complainant, The Gulf & Ship Island Railroad Company, having prayed and obtained an appeal to our supreme court, at Jackson, in said State, on the first Monday of March next, and having given bond for supersedeas:

We command you to cite the said Geo. P. Hewes, tax collector, or W. G. Evans, Jr., his attorney of record, to appear then and there, in and before said supreme court, to defend the said appeal, and have then and there this precept before our said supreme court.

Witness the Hon. Thos. H. Woods, chief justice of our said supreme court, the 2nd Monday of October, A. D. 1897.

Witness also F. S. Hewes, clerk of our said chancery court, and the seal of his court affixed the 23rd day of February, A. D. 1898.

F. S. HEWES, *Clerk.*

Endorsement: I hereby acknowledge service of the within writ and waive service of copy. This 23rd day of February, 1898. Geo. P. Hewes, sheriff & tax coll., Harrison county, Miss.

The foregoing record endorsed as follows:
No. 9018. Filed March 4th, 1898. E. W. Brown, clerk, by C. C. Campbell, D. C.

16 In the Supreme Court, from Second District.

GULF & SHIP ISLAND R. R. COMPANY, Appellant,
vs.
GEO. P. HEWES, Tax Collector, Appellee. } No. —.

It is agreed between counsel for appellant and appellee that this cause shall be continued till the October term, A. D. 1898, of this court.

E. J. BOWERS,
For Appellant.
W. G. EVANS, JR.,
For Appellee.

Endorsed: Filed Ap'l 12, 1898. E. W. Brown, clerk, by C. C. Campbell, D. C.

And on the 18th day of April, 1898, the following order was made:

GULF AND SHIP ISLAND RAILROAD CO.
v.
GEO. P. HEWES, Tax Coll., &c. } 9018.

Continued by agreement.

17 STATE OF MISSISSIPPI:

In the Supreme Court.

GULF & SHIP ISLAND R. R. Co., Appellant,
vs.
GEO. P. HEWES, Tax Collector, Appellee.

It is agreed between counsel for appellant and appellee that this case may be passed and continued until the March term, A. D. 1899, of the supreme court of the State of Mississippi.

E. J. BOWERS,
Sol. for Complainant & Appellant.
W. G. EVANS, JR.,
Solicitor for Defendant & Appellee.

Endorsed: Filed Jan'y 31, 1899. E. W. Brown, clerk, by C. C. Campbell, D. C.

And on the 6th day of February, 1899, the following order was entered:

GULF & SHIP ISLAND R. R. CO.
v.
GEO. P. HEWES, Tax Coll., &c. } 9018.

Continued by agreement.

18 G. & S. I. RAILROAD CO., Appellant,
vs.
GEORGE P. HEWES, Appellee.

In this cause it is agreed th-t the case on appeal shall be heard and determined as if the bill stated and recited the fact that the said Gulf & Ship Island Railroad Company was chartered and constructed after the decision of the supreme court of the State of Mississippi in the case of The Mississippi Mills *vs.* Cook, 56 Miss., page 40, and that the incorporators and stockholders invested their money in the said enterprise relying upon the adjudication of the supreme court of Mississippi in said cause as the law, and that said investment would not have been made or said road built but for their reliance upon said adjudication, all of which is to be understood as incorporated in said bill by appropriate averments and pleading.

This agreement being made with the consent of the chancellor, whose judgment upon the demurrer would have been the same, and in order to save a motion to remand the cause in order to complete the bill by the introduction of such averment.

Witness our signatures this 11th day of April, A. D. 1899.

E. J. BOWERS,
For Def't & Appellant.
W. G. EVANS, JR.,
Sol. for Complainants & Appellees.

The above is entered into with my full assent.

N. C. HILL,
Chancellor.

Endorsed: Filed Ap'l 15, 1899. E. W. Brown, clerk, by C. C. Campbell, D. C.

19 In the Supreme Court.

GULF & SHIP ISLAND RAILROAD COMPANY
vs.
GEORGE P. HEWES, Tax Collector.

Now comes appellant and assigns the following error to its prejudice appearing on the face of the record, viz:

The court erred in sustaining the demurrer and dismissing complainant's bill.

Respectfully submitted.

E. J. BOWERS,
Solicitor for Appellant.

Endorsed: Filed April 21, 1899. E. W. Brown, clerk, by C. C. Campbell, D. C.

And on the 17th day of April, 1899, a day of the regular March term, A. D. 1899, the following order was made:

GULF AND SHIP ISLAND RAILROAD CO.
v.
GEO. P. HEWES, Tax Coll., &c. } 9018.

Submitted on brief by Mr. W. G. Evans, Jr., for the appellee, with leave to the appellant to file brief during the week.

And on the 8th day of May, 1899, the following final decree was rendered by the supreme court in said cause, to wit:

GULF AND SHIP ISLAND RAILROAD CO.
v.
GEO. P. HEWES, Tax Collector. } 9018.

This cause having been submitted on a former day of this term on the record herein from the chancery court of Harrison county, and this court, having sufficiently examined and considered the same and being of opinion that there is no error therein, doth order, adjudge, and decree that the decree of said chancery court rendered in this cause at the February term thereof, A. D. 1898, on the 10th day of February, 1898, be, and the same is hereby, affirmed, and that the appellant and E. J. Bowers and E. Sugden, sureties, do pay the costs of this cause in this court and in the court below, to be taxed, &c.

20 THE UNITED STATES OF AMERICA, *State of Mississippi.*

THE GULF & SHIP ISLAND RAILROAD Company, E. J. Bowers, and E. Sugden
vs.
GEORGE P. HEWES, Tax Collector. } Petition for Writ of Error.

To the Honorable Thomas H. Woods, chief justice of the supreme court of the State of Mississippi:

The petition of the Gulf & Ship Island Railroad Company and E. J. Bowers and E. Sugden respectfully shows—

That on the eighth day of May, A. D. 1899, the said supreme court rendered a judgment against the petitioners in a certain cause wherein your petitioner The Gulf & Ship Island Railroad Company was the appellant and the other petitioners were its sureties on its appeal bond and George P. Hewes, tax collector of the county of Harrison, in said State of Mississippi, was appellee, a judgment was rendered affirming the decree of the chancery court of said Harrison county, whereby the demurrer of said Hewes, tax collector, to the bill of complaint of said railroad company was sustained and

said bill was dismissed, and rendering judgment against said Gulf & Ship Island Railroad Company and said E. J. Bowers and E. Sugden for the costs of said cause in said supreme court and said chancery court; that in said suit was drawn in question the validity of certain statutes of the said State of Mississippi, on the ground of their being repugnant to the Constitution of the United States and the amendments thereto, and the decision of said supreme court was in favor of the validity of such statutes, and that in said suit was also drawn in question the validity of an authority exercised by the said tax collector of Harrison county under the said statutes of said State, on the ground that the same is repugnant to the Constitution of the United States and the amendments thereto, and the decision of the said supreme court was in favor of the validity of such authority, and that in said suit was also drawn in question the validity of an authority exercised by the railroad commission of said State, acting as assessors of railroad property for taxation under the statutes of said State, on the ground that the same
21 is repugnant to the Constitution of the United States and the amendments thereto, and the decision of the said supreme court was in favor of the validity of such authority, and that in said suit was also drawn in question the validity of an authority exercised by the said supreme court and the chancery court of Harrison county, in said State, under the statutes of said State, on the ground that the same is repugnant to the Constitution of the United States and the amendments thereto, and the decision of the supreme court was in favor of such authority; and the decision of the said supreme court of the State of Mississippi was final, and the said supreme court is the highest court of resort in said State.

Wherefore and whereby petitioners are aggrieved, and they pray for a writ of error, with citation and supersedeas, returnable into the Supreme Court of the United States on the —.

And, as in duty bound, they will ever pray, etc.

GULF & SHIP ISLAND RAILROAD COMPANY,
By E. J. BOWERS &
McWILLIE & THOMPSON, *Att'ys.*
E. J. BOWERS,
By McWILLIE & THOMSON,
His Att'ys.
E. SUGDEN,
By McWILLIE & THOMPSON,
His Att'ys.

McWILLIE & THOMPSON &
E. J. BOWERS,
Sol'rs for Petitioners.

STATE OF MISSISSIPPI:

Desiring to give petitioners an opportunity to test in the Supreme Court of the United States the questions presented in the foregoing petition and in the assignment of errors by which it is accompanied,

it is ordered that a writ of error be, and the same is hereby, allowed to the said court, and that the same be made a supersedeas, the bond in the penal sum of four thousand dollars, also herewith presented, being hereby approved.

In testimony whereof witness my hand this — day of May, A. D. 1899.

THOMAS H. WOODS,
Chief Justice of the Supreme Court of the State of Mississippi.

Endorsed: Filed May 16, 1899. E. W. Brown, clerk, by C. C. Campbell, D. C.

22 STATE OF MISSISSIPPI:

In the Supreme Court, March Term, 1899.

GULF & SHIP ISLAND RAILROAD COMPANY, Appellant,
vs.
GEORGE P. HEWES, Tax Collector of Harrison County, Appellee.

I, Thomas H. Woods, chief justice of the supreme court of the State of Mississippi at the present time, and upon the argument and hearing of the above-entitled appeal, do hereby certify:

I. That upon said argument and hearing the validity of legislation of said State of Mississippi subsequent to the statute thereof of February 23, 1882, was drawn in question by the Gulf & Ship Island Railroad Company on the ground of such legislation being repugnant to section 10 of article 1 of the Constitution of the United States, in that such legislation impaired the obligation of a contract between the State of Mississippi and said Gulf & Ship Island Railroad Company, and that the decision of said supreme court of Mississippi was in favor of the validity of such legislation and such constitutional provision.

II. That upon said argument and hearing the validity of the statutes of Mississippi in the Annotated Code of 1892, providing for the taxation of railroads, *were* drawn in question by the said Gulf & Ship Island Railroad Company on the ground of their being repugnant to the Constitution of the United States and the 14th amendment thereto, in that in and by said statutes the State of Mississippi denies to the said Gulf & Ship Island Railroad Company within its jurisdiction the equal protection of the laws, and that the decision of the said supreme court of Mississippi was in favor of the validity of the said statutes.

In witness whereof I have hereto subscribed my name this — day of May, in the year of our Lord one thousand eight hundred and ninety-nine.

THOMAS H. WOODS,
Chief Justice of the Supreme Court of Mississippi.

23 I, E. W. Brown, clerk of the supreme court of Mississippi, do hereby certify that the Honorable Thomas H. Woods, by whom the foregoing certificate was made and given, was at the time

of making and giving the same and is now chief justice of the supreme court of Mississippi, to whose acts as such full faith and credit are and ought to be given, as well in courts of judicature as elsewhere, and that his signature subscribed thereto is genuine.

In witness whereof I have hereto set my hand and affixed the seal of the supreme court of Mississippi this the 16th day of May, in the year of our Lord one thousand eight hundred and ninety-nine.

E. W. BROWN, *Clerk*,
By C. C. CAMPBELL, *D. C.*

Endorsed: Filed May 16, 1899. E. W. Brown, clerk, by C. C. Campbell, D. C.

24 Know all men by these presents that we, the Gulf & Ship Island Railroad Company, E. J. Bowers, and E. Sugden, as principals, and Thomas A. McWillie and Robert H. Thompson, as sureties, are held and firmly bound unto George P. Hewes, tax collector of Harrison county, in the State of Mississippi, in the full and just sum of four thousand dollars, to be paid to the said George P. Hewes, tax collector, his successor in office, or his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, successors, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated the — day of May, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, at a supreme court of the State of Mississippi, in a suit depending in said court between The Gulf & Ship Island Railroad Company, appellant, and George P. Hewes, tax collector of Harrison county, Mississippi, appellee, a judgment was rendered against the said Gulf & Ship Island Railroad Company and E. J. Bowers and E. Sugden, sureties on its appeal bond, and the said Gulf & Ship Island Railroad Company and the said Bowers and Sugden obtained a writ of error and filed a copy thereof in the clerk's office in the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said George P. Hewes, tax collector, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, within thirty days from the date thereof:

Now, the condition of the above obligation is such that if the said Gulf & Ship Island Railroad Company, E. J. Bowers, and E. Sugden shall prosecute their writ of error to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and effect.

[SEAL.] GULF & SHIP ISLAND RAILROAD COMPANY,
[SEAL.] By E. J. BOWERS & McWILLIE & THOMPSON, *Att'ys.*
[SEAL.] E. J. BOWERS,
By McWILLIE & THOMPSON, *Att'ys.*
[SEAL.] E. SUGDEN,
By McWILLIE & THOMPSON, *Att'ys.*

25 STATE OF MISSISSIPPI:

Personally appeared before me, the undersigned, chief justice of the supreme court of Mississippi, Thomas A. McWillie and Robert H. Thompson, who, being duly sworn, depose and say that they are severally worth the sum of two thousand dollars ($2,000) in visible property subject to execution over and above all their just debts and liabilities.

THOMAS A. McWILLIE. [SEAL.]
ROBERT H. THOMPSON. [SEAL.]

Sworn to and subscribed before me this 16 day of May, A. D. 1899.

THOMAS H. WOODS,
Chief Justice of the Supreme Court.

Endorsed: Filed May 16, 1899. E. W. Brown, clerk, by C. C. Campbell, D. C.

26 I, E. W. Brown, clerk of the supreme court of Mississippi, do hereby certify that this and foregoing 25 pages contain a true, full, and perfect copy of the record and proceedings in the case of The Gulf & Ship Island Railroad Company, appellant, against George P. Hewes, tax collector, appellee, lately pending in said supreme court and numbered 9018 on the docket of said court, in which said cause no written opinion was delivered by said supreme court on affirming the decree of the chancery court of Harrison county, Mississippi.

In testimony whereof witness my hand and the seal of said supreme court of Mississippi this 27th day of May, A. D. 1899.

[Seal Supreme Court, State of Mississippi.]

E. W. BROWN, *Clerk.*

27 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Mississippi, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in said suit, between the Gulf & Ship Island Railroad Company and George P. Hewes, tax collector of Harrison county, in said State, and wherein judgment was rendered in favor of said defendant in said court on the eighth day of May, A. D. 1899, against said plaintiff in said court and against the Gulf & Ship Island Railroad Company and E. J. Bowers and E. Sugden, sureties, and in which suit was drawn in question the validity of certain statutes of the State of Mississippi, on the ground of their being repugnant to the Constitution of the United States and the amendments thereto, and the decision of the said supreme court was in favor of the validity thereof, and in which suit was also drawn in question the validity of an authority exer-

cised by the said Gulf & Ship Island Railroad Company under the statutes and constitution of said State, on the ground that the same is repugnant to the Constitution of the United States and the amendments thereto, and the decision of the said supreme court was in favor of the validity of such authority, and in which suit was also drawn in question the validity of an authority exercised by the railroad commission of said State acting as assessors of railroad property for taxation under the statutes and constitution of said State, on the ground that the same is repugnant to the Constitution of the United States and the amendments thereto, and the
28 decision of said supreme court was in favor of the validity of such authority, and in which suit was also drawn in question the validity of an authority exercised by said supreme court and by the chancery court of Harrison county, in said State, under the constitution and statutes of said State, on the ground that the same is repugnant to the Constitution of the United States and the amendments thereto, and the decision of the said supreme court was in favor of the validity of such authority, a manifest error hath happened, to the great damage of said Gulf & Ship Island Railroad Company and of said E. J. Bowers and E. Sugden, as by their complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment therein be given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, on the 13th day of June next, in the said Supreme Court to be then and there held, that the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 16 day of May, in the year of our Lord one thousand eight hundred and ninety-nine.

Seal U. S. Circuit Court, Southern District of Mississippi, 5th Circuit.

Witness also my signature and the seal of the circuit court of the United States in and for the southern district of Mississippi this the day and year aforesaid.

L. B. MOSELEY, *Clerk*.

29 In obedience to the within writ of error I herewith return the same and send therewith to the Supreme Court of the United States, under my hand and the seal of the supreme court of Mississippi, directly and openly the record and proceedings in the cause in said writ mentioned, with all things concerning the same.

In testimony whereof witness my signature and the seal of said supreme court of Mississippi this 27th day of May, A. D. 1899.

[Seal Supreme Court, State of Mississippi.]

E. W. BROWN, *Clerk*,
By C. C. CAMPBELL, *D. C.*

29½ [Endorsed:] Filed May 16, 1899. E. W. Brown, clerk, by C. C. Campbell, D. C.

30 UNITED STATES OF AMERICA, ss:

To George P. Hewes, tax collector of Harrison county, in the State of Mississippi, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, in the District of Columbia, within thirty days from the date hereof, pursuant to a writ of error filed in the supreme court of the State of Mississippi, wherein The Gulf & Ship Island Railroad Company and E. J. Bowers and E. Sugden are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the plaintiffs in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Thomas H. Woods, chief justice of the supreme court of the State of Mississippi, this the 16 day of May, A. D. 1899.

THOMAS H. WOODS,
Chief Justice of the Supreme Court of Mississippi.

Executed the within process this day upon the within-named George P. Hewes in person by handing to him a true copy thereof, at Mississippi City, Mississippi, this May 18th, 1899.

FRED. W. COLLINS,
U. S. Marshal for the Southern District of Miss.,
By J. F. WILLIAMS,
Deputy Marshal.

[Endorsed:] Received May 16, 1899. Fred W. Collins, U. S. marshal. Filed May 23, 1899. E. W. Brown, clerk.

31 In the Supreme Court of the United States.

GULF & SHIP ISLAND RAILROAD COMPANY ET AL.
vs.
GEORGE P. HEWES, Tax Collector.

Assignment of Errors.

Afterwards, to wit, on the — day of May, in the year of our Lord eighteen hundred and ninety-nine, at the October term for eighteen hundred and ninety-eight of the Supreme Court of the United States, at the Capitol, in the city of Washington, in the District of Columbia, come The Gulf & Ship Island Railroad Company and E. J. Bowers and E. Sugden, plaintiffs in error, and say that in the record and proceedings in the above-entitled cause there is manifest error in this, to wit:

I.

That the final decree of the supreme court of Mississippi in said cause was in favor of the validity of legislation of said State subsequent to February 23, 1882, which legislation was drawn in question by said Gulf & Ship Island Railroad Company on the ground that such legislation was repugnant to section 10 of article 1 of the Constitution of the United States, in that the same impaired the obligation of a contract between said State and said railroad company contained in the charter of said company of the date aforesaid, as in fact it did.

II.

That the final decree of the supreme court of Mississippi in said cause was in favor of the validity of the statutes of said State in the Annotated Code of 1892, providing for the taxation of railroads, which statutes were drawn in question by the Gulf & Ship Island Railroad Company on the ground of their being repugnant
32 to the Constitution of the United States and the fourteenth amendment thereto, and that in and by the said statutes the State of Mississippi denies to said railroad company within its jurisdiction the equal protection of its laws, as in fact it does.

III.

That the final decree of the supreme court of Mississippi was in favor of the validity of an authority exercised by the chancery court of Harrison county, in said State, under the statutes thereof; which authority as exercised by said chancery court and by said supreme court in affirming said final decree was drawn in question on the ground that the same is repugnant to the Constitution of the United States and section 10 of article 1 thereof, in that the same impaired the obligation of a contract between said State and said railroad company contained in the charter of said company of the date aforesaid.

IV.

That the final decree of the supreme court of Mississippi was in favor of the validity of an authority exercised by said George P. Hewes, tax collector, defendant in error, under the statutes of Mississippi, which was drawn in question on the ground that the same is repugnant to the Constitution of the United States and the fourteenth amendment thereto, in that he is attempting to deprive said plaintiff in error of its property without due process of law.

Wherefore the said plaintiffs in error pray that the said final decree of the supreme court of Mississippi be reversed, etc.

E. J. BOWERS AND
McWILLIE & THOMPSON,
Attorneys for Plaintiffs in Error.

[Endorsed:] Filed May 16, 1899. E. W. Brown, clerk, by C. C. Campbell, D. C.

Fees for making this transcript, $21.70.
Paid by G. & S. I. R. R. Co., per McWillie & Thompson.

E. W. BROWN, *Clerk*,
By C. C. CAMPBELL, *D. C.*

Endorsed on cover: File No., 17,441. Mississippi supreme court. Term No., 327. The Gulf & Ship Island Railroad Company *et al.*, plaintiffs in error, *vs.* George P. Hewes, tax collector of Harrison county, Mississippi. Filed June 12th, 1899.